

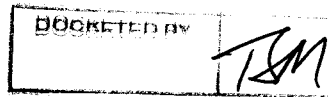
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Arizona Corporation Commission
DOCKETED

FEB 12 2013



John E. Dougherty
Complainant
PO Box 501
Rimrock, AZ 86335



BEFORE THE ARIZONA CORPORATION COMMISSION

Commissioners

BOB STUMP– Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

**JOHN E. DOUGHERTY
COMPLAINANT**

Vs.

**MONTEZUMA RIMROCK WATER
COMPANY, LLC
RESPONDENT**

W-04254A-11-0323

**MOTION TO ADD
ALLEGATION XVII**

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BY THE COMPLAINANT:

**STATEMENT OF FACTS
ALLEGATION XVII**

1. On March 12, 2012, the Administrative Law Judge issued a Procedural Order in Docket W-4254A-08-361, W-4254A-08-362 stating “that if Montezuma has executed any contractual documents related to purchase, construction installation, operation or maintenance of an arsenic treatment facility to treat the water from its Well #1 and/or Well #4, Montezuma shall, by March 30, 2012, file a copy of all such contractual documents in this docket.”

2. On April 9, 2012, the Administrative Law Judge issued the following Procedural Order in Docket W-4254A-08-361, W-4254A-08-362: “IT IS FURTHER ORDERED that **Montezuma, through counsel, shall, by April 13, 2012, file complete copies of any and all agreements** that have been executed by Ms. Olsen individually or for Montezuma, for the purpose of Montezuma’s obtaining arsenic treatment for its water supply.”

3. On April 13, 2012, Montezuma's Counsel docketed two lease agreements for an Arsenic Treatment Building and Arsenic Treatment Facility. Ms. Olsen, personally, signed the purported leases on March 16, 2012 with Nile River Leasing, LLC. (See Exhibit 1, Pages 1-3, W-04254A-12-0204 et seq., Docketed Jan. 14, 2013)
4. One lease indicates Ms. Olsen personally entered into a three-year lease agreement with Nile River for an Arsenic Treatment Building. The agreement is signed by Patricia D. Olsen and dated March 16, 2012.
5. The other lease indicates Ms. Olsen personally entered into a five-year lease agreement with Nile River for the Arsenic Treatment Facility. The agreement is signed by Patricia D. Olsen and dated March 16, 2012.
6. MRWC Counsel's April 13 filing also included a \$46,000 purchase contract with Kevlor Design Group, LLC. The contract is between Kevlor and "Patricia Olsen, Owner/Operator of Montezuma Rimrock Water Company, LLC." Patricia D. Olsen signs the agreement as manager on February 28, 2012. (See Exhibit 1, Pages 4-6, W-04254A-12-0204 et seq., Docketed Jan. 14, 2013)
7. The plain language of the contract identifying "Patricia Olsen, Owner/Operator of Montezuma Rimrock Water Company, LLC" and the fact Ms. Olsen signed the agreement as "manager" contradicts Counsel's assertion in an April 27, 2012 Legal Brief in Docket W-4254A-08-361, W-4254A-08-362 that this contract is "strictly between Ms. Olsen and Kevlor" and not subject to Commission approval.
8. Instead, this contract appears to be an agreement between Kevlor and Montezuma that is subject to Commission Approval under Decision 71317 that required Montezuma to finance the purchase and construction of the Arsenic Treatment System through a loan from the Arizona Water Infrastructure Financing Authority.
9. On April 27, 2012, Montezuma's Counsel entered a Legal Brief in Docket W-4254A-08-361, W-4254A-08-362 that stated:

Ms. Olsen has entered a contract for construction and installation of an arsenic treatment facility with Kevlor Design Group. That contract is strictly between Ms. Olsen and Kevlor, neither of which are public service corporations subject to jurisdiction of the Arizona Corporation Commission. Thus, no approval of the Corporation Commission is required as to that agreement. The second agreement is a lease between Ms. Olsen and Nile River Leasing. Again, that agreement is strictly between Ms. Olsen and Nile River Leasing, neither of which are public service corporations subject to jurisdiction of the Arizona Corporation Commission.

10. On March 22, 2012, without notice to the Commission and in an effort to circumvent Commission approval of Capital Leases under ARS S40-301, -302, Montezuma entered into a Capital Lease agreement with Nile River for the Arsenic Treatment Building.

11. Montezuma's Counsel did not include the March 22 lease agreement between Montezuma and Nile River in his April 13 filing of lease agreements in response to the March 12 and April 9 procedural orders, but instead docketed the March 16, 2012 lease between Ms. Olsen and Nile River.

12. Nor did Montemuma's Counsel address Montezuma's March 22 lease agreement in his April 27 legal brief when Counsel claimed the lease agreements for the Arsenic Treatment System (building and facility) were strictly between Ms. Olsen and Nile River and were not subject to the jurisdiction of the Commission.

13. Without notice to the Commission and in an effort to circumvent Commission approval of Capital Leases under ARS S40-301, -302, Montezuma purportedly entered into a second Lease agreement with Nile River, this time for the Arsenic Treatment Facility.

14. Montezuma does not disclose that the Company, rather than Ms. Olsen, entered into both lease agreements with Nile River until an October 26, 2012 filing in W-04254A-12-0204 et seq. Montezuma, which was not represented by Counsel in W-04254A-12-0204 et seq. at the time, did not provide a copy of the filing to other parties in the case.

15. In the Oct. 26 filing, Montezuma claims the Company entered into a May 2, 2012 lease agreement with Nile River for the Arsenic Treatment Facility. In the same filing, the Company discloses it entered into the March 22 lease agreement with Nile River for the Arsenic Treatment Building. (See Exhibit 2, Pages 1-8, W-04254A-12-0204 et seq., Docketed Jan. 14, 2013)

16. Rather than entering into a lease agreement for the Arsenic Treatment Facility on May 2, 2012 with Nile River, state records show Montezuma entered the lease agreement for the Arsenic Treatment Facility with a different vendor on April 3, 2012. (See Exhibit 7, W-04254A-12-0204 et seq., Docketed Jan. 15, 2013)

17. According to a May 9, 2012 UCC filing with the Arizona Secretary of State, Montezuma entered into a lease agreement with Financial Pacific Leasing, LLC and Wells Fargo Capital Finance, LLC on April 3, 2012: The May 9 UCC Financing Statement includes the following collateral:

*"All equipment and other personal property, now or hereafter the subject of that certain Lease Agreement, **relating to Lease 001-0796680-001, dated 04/03/2012** (emphasis added) between the Secured Party as Lessor and Debtor as Lessee, together with all attachments, additions, accessories, substitutions and replacements thereto, and any and all insurance and other proceeds of the foregoing."*

18. Additional records obtained by Complainant and submitted in W-04254A-12-0204 et seq. on January 14 and 15 indicate that the April 3 lease agreement between Montezuma and Financial Pacific is for the Arsenic Treatment Facility. (See Exhibit 3,4 5 & 6, W-04254A-12-0204 et seq., Docketed Jan. 14, 2013) (1)

19. In a December 3, 2012 letter to the Commission submitted in Docket W-4254A-08-361, W-4254A-08-362, Ms. Olsen admits that the Company entered into the lease agreements for the Arsenic Treatment System (building and facility). Ms. Olsen states that “MRWC obtained a lease” for the “arsenic treatment system” and stated a copy of the lease was filed on Oct. 26, 2012 in Docket No. W-04254A-12-0204. (Exhibit 1)

20. The May 9, 2012 UCC filing, however, shows Montezuma entered into an agreement for the Arsenic Treatment Facility on April 3, 2012, prior to Montezuma’s Counsel’s April 13 disclosure of lease agreements purportedly between Ms. Olsen and Nile River and Counsel’s April 27 Legal Brief.

21. Montezuma’s bait-and-switch replacing Ms. Olsen with the Company as the lessor on the Arsenic Treatment Building and Arsenic Treatment Facility leases was done to illegally circumvent Commission approval of the leases because both leases are Capital leases. (See Intervener’s January 14, 2013, Analysis in Motions in W-04254A-12-0204 et seq.)

22. Such approval may have proved difficult to obtain because of the very expensive terms of the leases and the Company’s weak balance sheet damaged by years of mismanagement that is now reflected in the Company’s request for a 115 percent rate increase, plus two \$6 plus monthly surcharges.

23. Montezuma’s motive to submit fraudulent lease agreements to the Commission was to avoid Commission review of the Capital leases that would consider whether the Company’s cash flow was sufficient to pay for the leases.

24. Montezuma wanted to install the arsenic treatment system immediately because it was facing an impending Consent Order deadline from the Arizona Department of Environmental Quality to have the Arsenic Treatment System (building and facility) installed.

25. Violating the ADEQ deadline would have lead to sanctions and ADEQ notification to the Commission that Montezuma was not in Compliance with ADEQ arsenic regulations and would have put Montezuma in direct violation of Decision 71317.

(1)--Montezuma has not produced a true and accurate copy of the April 3 lease agreement with Financial Pacific that was requested by Complainant acting as Intervener in his Third Data Request in W-04254A-12-0204 et seq. dated Jan. 14, 2012.

Allegation XVII

Complainant respectfully moves the Commission to amend the formal Complaint to include the following five claims (A-E) as Allegation XVII:

A. Montezuma knowingly and willfully violated the March 12, 2012 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362 by submitting false documents to the Commission purportedly showing a March 16, 2012 lease agreement between Ms. Patricia Olsen and Nile River Leasing for an Arsenic Treatment Building when, in fact, Montezuma had signed a lease agreement with Nile River on March 22, 2012. This action was undertaken to circumvent Commission approval of Capital Leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

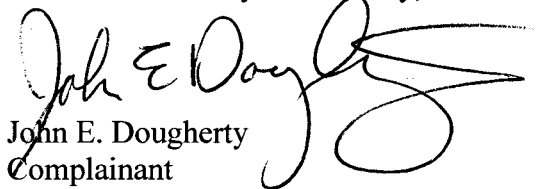
B. Montezuma knowingly and willfully violated the March 12, 2012 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362 by submitting false documents to the Commission purportedly showing a March 16, 2012 lease agreement between Ms. Patricia Olsen and Nile River Leasing for an Arsenic Treatment Facility when, in fact, Montezuma had signed the lease agreement with Financial Pacific Leasing, LLC on April 3, 2012. This action was taken to circumvent Commission approval of Capital Leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

C. Ms. Patricia Olsen knowingly and willfully docketed a fraudulent lease agreement between Montezuma and Nile River Leasing for an Arsenic Treatment Facility dated May 2, 2012 in an October 26 filing in W-04254A-12-0204 et seq. when, in fact, the Company had signed the effective lease agreement with Financial Pacific Leasing on April 3, 2012. This action was taken to circumvent Commission approval of Capital leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

D. The Company has willfully spent or encumbered Ratepayer funds in connection with the execution of the unauthorized Capital Leases entered into by the Company in violation of ARS S40-423.

E. The Company, rather than Ms. Olsen, entered into a purchase agreement with Kevlor for the Arsenic Treatment System in violation of Decision 71317, ARS S40-301, -302, ARS S40-424 and ARS S40-425.

Dated this 12th Day of February, 2013


John E. Dougherty
Complainant

Copies of the foregoing mailed/delivered
This 12th day of February, 2013 to:

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ORIGINAL

Exhibit 1

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

WIFA Loan Request Withdrawal

W-04254A-08-0362

DOCKET NO. W-04254A-08-0361
DECISION NO. 71317

Montezuma Rimrock Water Company LLC hereby requests the withdrawal of its WIFA loan request and the submittal requirements.

Patricia D. Olsen

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Montezuma Rimrock Water Co LLC

**P.O. Box 10
Rimrock, AZ 86335
928-592-9211**

December 3, 2012

Arizona Corporation Commission
Docket Control
1200 West Washington
Phoenix, AZ 85007

RE: Docket No. W-04254A-08-0361
Decision No. 71317

Montezuma Rimrock Water Company (MRWC) is not seeking WIFA loan funding for its arsenic treatment system at this time. MRWC obtained a lease to which a copy was filed on October 26, 2012 Docket No. W-04254A-12-0204. MRWC hereby requests to remove the compliance item regarding WIFA funding document submittals requirement.

Patricia D. Olsen